



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Insurance Commissioner

☒ Permanent Rule
☐ Emergency Rule

Effective date of rule:

Permanent Rules

☒ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☐ Immediately upon filing.
☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: WAC 284-43-260 requires health carriers to permit a contracted network provider to select another provider who will serve as a substitute in the absence of the contracted provider. This is commonly referred to as a "locum tenens" provision. The rule sets standards for providers who act as substitutes, permits carriers to require the use of separate billing codes, and exempts Medicare Advantage Plans from the rule.

WAC 284-43-262 requires carriers to permit network providers who are called to active military service to seek reinstatement within 120 days after returning to civilian life upon a showing that the provider meets the carrier's then-current credentialing standards, even if the carrier's network is otherwise closed or full.

Insurance Commissioner Matter No. R 2005-04

Citation of existing rules affected by this order:

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 48.02.060 and 48.43.515

Other authority :

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 07-17-165 on August 22, 2007 (date).

Describe any changes other than editing from proposed to adopted version:

1. WAC 284-43-260 introductory paragraphs: Added intent paragraph regarding the importance patient safety and quality of care.
2. WAC 284-43-260(1)(e): Added requirement that a substitute provider must have a current Drug Enforcement Agency certificate, if applicable.
3. WAC 284-43-260(3): Added a provision allowing the carrier to require the contracted provider to use the "Q6 modifier" when billing for services provided by the substitute provider. (The Q6 modifier is a commonly used billing code that alerts a carrier that a substitute provider supplied the billed services.)
4. WAC 284-43-260(4): Clarified that nothing in the rule is intended to prevent the carrier from requiring the substitute provider to accept the carrier's fee schedule or accept the carrier's usual and customary charge as payment in full. (This should prevent the substitute provider from balance billing the patient.)
5. WAC 284-43-260(5): Added an exception for Medicare Advantage or other health plans administered by the federal government that require pre-credentialing of all participating providers.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted: December 10, 2007

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

Mike Kreidler

TITLE

Insurance Commissioner

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 10, 2007

TIME: 9:03 AM

WSR 08-01-025

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	<u>2</u>	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>2</u>	Repealed	_____

NEW SECTION

WAC 284-43-260 Standards for temporary substitution of contracted network providers--"Locum tenens" providers. It is a longstanding and widespread practice for contracted network providers to retain substitute providers to take over their professional practices when the contracted network providers are absent for reasons such as illness, pregnancy, vacation, or continuing medical education, and for contracted network providers to bill and receive payment for the substitute providers' services as though they were provided by the contracted network provider. The contracted network provider generally pays the substitute provider based on an agreement between the contracted network provider and the substitute provider, and the substitute provider has the status of an independent contractor rather than an employee of the contracted network provider. These substitute providers are commonly called "locum tenens" providers.

In order to protect patients and ensure that they benefit from seamless quality care when contractual network providers are away from their practices, and that patients receive quality care from qualified substitute providers, carriers may require substitute providers to provide the information required in subsection (1) of this section.

The following are minimum standards for temporary provider substitution and do not prevent a carrier from entering into other agreed arrangements with its contracted network providers for terms that are less restrictive or more favorable to providers.

Carriers must permit the following categories of contracted network provider to arrange for temporary substitution by a substitute provider: Doctor of medicine, doctor of osteopathic medicine, doctor of dental surgery or dental medicine, doctor of chiropractic, podiatric physician and surgeon, doctor of optometry, doctor of naturopathic medicine and advanced registered nurse practitioner.

(1) At the time of substitution, the substitute provider:

- (a) Must have a current Washington license and be legally authorized to practice in this state;
- (b) Must provide services under the same scope of practice as the contracted network provider;
- (c) Must not be suspended or excluded from any state or federal health care program;
- (d) Must have professional liability insurance coverage; and
- (e) Must have a current drug enforcement certificate, if applicable.

(2)(a) Carriers must allow a contracted network provider to arrange for a substitute provider for at least sixty days during any calendar year.

(b) A carrier must grant an extension if a contracted network provider demonstrates that exceptional circumstances require additional time away from his or her practice.

(3) A carrier may require that the contracted network provider agree to bill for services rendered by the substitute provider using the carrier's billing guidelines, including use of HIPAA compliant code sets, commonly known as the Q-6 modifier, or any other code or modifier that the Centers for Medicare and Medicaid Services (CMS) adopts in the future.

(4) Nothing in this section is intended to prevent the carrier from requiring:

(a) That the contracted network provider require acceptance by the substitute provider of the carrier's fee schedule; or

(b) Acceptance by the substitute provider of the carrier's usual and customary charge as payment in full.

(5) This rule does not apply to Medicare Advantage or other health plans administered by the federal government that require precertification of all providers.

NEW SECTION

WAC 284-43-262 Rule concerning contracted network providers called to active duty military service. In lieu of substitution of a provider during a period of active duty military service longer than sixty continuous days, carriers must provide contracted network providers with the opportunity to return to the carrier's network after the provider's active duty military service is completed.

(1) (a) A carrier must allow the provider a period of at least one hundred twenty days to request a return to contracted network provider status after the provider returns to civilian status.

(b) The one hundred twenty-day period must begin no earlier than the date the provider's period of active duty ends.

(2) (a) As a condition for return to the carrier's network, the carrier may require that the provider provide evidence that he or she meets the carrier's then-current standards for credentialing.

(b) If the provider meets or exceeds the credentialing standards of the carrier and timely requests a return to contracted network provider status, the carrier must grant the request whether or not the carrier's network is otherwise closed.